IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

JOSEPH R. WALKER and DONNA WALKER   PLAINTIFFS

v.   Civil Action No. 2:07cv274-KS-MTP

GEORGE KOCH SONS, INC.
and JOHN DOES 1 THROUGH 10   DEFENDANTS

ORDER

THIS MATTER is before the court on a Motion to Strike Plaintiffs' Untimely and

Previously Undisclosed Medical Record and Opinion Contained Therein or, in the Alternative,

Leave to Depose Doctor at Plaintiffs' Costs [101] [103] filed by Defendant. The basis for the

motion is Plaintiffs' November 5, 2008 production to Defendant of a narrative report by Dr.

Rocco Barbieri, Plaintiff Joseph Walker's primary treating physician, of a March 4, 2008 office

visit. Defendant contends that Plaintiffs withheld this report for months, despite it being

responsive to numerous discovery requests, and only produced it after the expiration of the

discovery deadline.

The record reveals that counsel for Plaintiffs made numerous requests to Dr. Barbieri to

obtain supplemental or updated medical records for Mr. Walker, including specific requests to

obtain the dictation report of the March 4, 2008 office visit. Plaintiffs' counsel did not receive the

dictation report until October 27, 2008, and they produced it to Defendant shortly thereafter.

Based on these facts, the court does not find that striking the report is warranted. However, the

court shall allow Defendant to depose Dr. Barbieri, within the next thirty (30) days, at its own

cost.

IT IS, THEREFORE, ORDERED and ADJUDGED that Defendant's Motion to Strike

Plaintiffs' Untimely and Previously Undisclosed Medical Record and Opinion Contained Therein

or, in the Alternative, Leave to Depose Doctor at Plaintiffs' Costs [101] [103] is granted in part

and denied in part. The medical records in question shall not be stricken. Defendant may depose

Dr. Barbieri, within the next thirty (30) days, at its own cost.

SO ORDERED this the 24th day of March, 2009.

s/ Michael T. Parker
United States Magistrate Judge